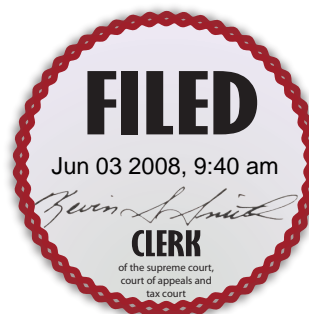


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JASON A. CHILDERS
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General Of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DEBORAH ANN HAZEL-MORPHEW,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A02-0710-CR-848

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No.48D01-0103-FC-120

June 3, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Deborah Hazel-Morphew's probation in Madison County was revoked and she was ordered to serve six years of her previously-suspended eight-year sentence. Hazel-Morphew appeals, contending that the trial court abused its discretion in sentencing her. Concluding that the trial court did not abuse its discretion in ordering her to serve six years of her previously-suspended sentence, we affirm.

Facts and Procedural History

In 2001, Hazel-Morphew pled guilty to two counts of dealing in a class IV controlled substance, both Class C felonies, and two counts of dealing in marijuana, both Class D felonies. She was sentenced to eight years for each Class C felony charge and three years for each Class D felony charge, all to be served concurrently. Hazel-Morphew was given credit for time served, and her resulting seven-and-one-half year sentence was suspended to probation.

In 2002, the Madison County Probation Department ("MCPD") filed a notice of probation violation alleging that Hazel-Morphew's drug screen had tested positive for marijuana and that she had left Indiana without permission. Hazel-Morphew admitted the allegations. The trial court revoked her probation and ordered her to serve six years of her previously-suspended sentence, but stayed the sentence pending her successful completion of a Drug Court program. The Madison County Drug Court admitted Hazel-Morphew to its program. Hazel-Morphew then sought and was granted permission to transfer her Drug Court obligation to Missouri.

In 2005, MCPD notified the trial court that Hazel-Morphew had failed to report for a scheduled meeting with her Missouri probation officer. In trying to find Hazel-Morphew, the probation officer spoke with Hazel-Morphew's husband, who reported that he and Hazel-Morphew had consumed alcohol, Hazel-Morphew had been using marijuana, and Hazel-Morphew was hiding clean urine samples to use when she was required to submit to a drug test. Hazel-Morphew missed a second scheduled appointment with her Missouri probation officer a few days later. Her probation officer spoke to her by telephone and told her to report at 2:30 p.m. that day. Hazel-Morphew did report that afternoon as ordered, but she left the meeting without providing a requested urine sample and her whereabouts were unknown. Missouri informed MCPD that it intended to reject Hazel-Morphew's request to transfer probation.

The trial court ordered Hazel-Morphew to appear and show cause why her previously-stayed sentence should not be executed. Hazel-Morphew failed to appear when ordered and a warrant was issued for her arrest. She was eventually extradited from Missouri and appeared in the trial court, admitting she knew that Missouri had rejected her transfer of probation, that Madison Superior Court had ordered her to return to Indiana and that she failed to return, and that she failed to provide a requested urine sample or complete her last probation meeting in Missouri. The trial court ordered the stay on her sentence lifted and ordered her to serve six years at the Department of Correction. Hazel-Morphew now appeals.

Discussion and Decision¹

I. Standard of Review

The appropriate standard of review of a trial court's sentencing decision upon a probation revocation is to determine whether the trial court abused its discretion. Sanders v. State, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005), trans. denied. An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before it. Abernathy v. State, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006).

“Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment.” Brabandt v. State, 797 N.E.2d 855, 860 (Ind. Ct. App. 2003). A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a “matter of grace” and a “conditional liberty that is a favor, not a right.” Id. (quoting Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999)). Indiana Code section 35-38-2-3(g) gives a trial court the following options upon finding a probationer has committed a violation of his probation:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or

¹ Hazel-Morphew has filed a single-volume appendix that has a green cover marked “Confidential” and consists of 199 pages. The pre-sentence investigation report appears on pages 74-107 of the appendix on green paper. The rest of the appendix is on white paper. Indiana Appellate Rule 9(J) requires that “[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).” Indiana Administrative Rule 9(G)(1)(b)(viii) states that “[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13” are “excluded from public access” and “confidential.” Hazel-Morphew's tender of her entire appendix as a confidential document and the inclusion of the pre-sentence investigation report within the appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part, that “[w]hole documents that are excluded from public access . . . shall be tendered on light green paper or have a light green coversheet attached to the document, marked ‘Not for Public Access’ or ‘Confidential.’” The pre-sentence investigation report and the remainder of the appendix should have been tendered as separate documents.

(3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

II. Six-Year Sentence

Hazel-Morphew contends the trial court abused its discretion in ordering her to serve six years of her previously-suspended sentence because the sentence is “disproportionate to the minor nature of the violations” and because she attempted to comply with the conditions of the stay of her sentence while in Missouri. Brief of the Appellant at 5.

Hazel-Morphew was originally sentenced to eight years for her two Class C and two Class D felony convictions. The entire sentence was suspended and she was placed on probation. Within five months of being sentenced, it was alleged that Hazel-Morphew had violated her probation by testing positive for marijuana and leaving the state without permission. After Hazel-Morphew admitted the violations, the trial court revoked her probation and ordered her to serve six years of her suspended sentence, but stayed the execution of the sentence pending her successful completion of a Drug Court program. Hazel-Morphew was unable to complete the program in Missouri and did not return to Indiana to complete the program here, and the trial court ordered her to serve the previously-stayed sentence.

It is undisputed that Hazel-Morphew violated the terms of her probation and then violated the terms by which her sentence for that violation was stayed. Hazel-Morphew was on probation for drug offenses, and her violations also involved drugs and/or drug treatment programs. As stated above, probation is a “matter of grace” and a “favor.” See

Brabandt, 797 N.E.2d at 860. The trial court, first in ordering that Hazel-Morphew execute less than all of her suspended sentence for violating her probation and then in staying that sentence, further extended that grace when it would have been within the trial court's discretion to order her immediately to the Department of Correction for seven-and-one-half years. Yet, after having been granted an additional favor, Hazel-Morphew was unable to comply with the conditions of the stay. "Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed." Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). It was within the trial court's discretion to revoke the stay and order Hazel-Morphew to serve six years of her sentence.

Conclusion

The trial court did not abuse its discretion in ordering Hazel-Morphew to serve six years of her previously-suspended sentence. The judgment of the trial court is affirmed.

Affirmed.

BAKER, C.J., and RILEY, J., concur.